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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtors.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR

Chapter 11

**FIRST OMNIBUS OBJECTION OF
USACM TRUST TO PROOFS OF
CLAIM BASED ENTIRELY UPON
INVESTMENT IN THE FIESTA
MURRIETA LOAN**

Date of Hearing: July 26, 2011

Time of Hearing: 1:30 p.m.

Estimated Time for hearing: 10 min.

The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing the Proofs of Claim listed in **Exhibit A**. These claims were filed by investors ("Direct Lenders") against USA Commercial Mortgage Company ("USACM") based upon an investment in a loan to Fiesta Development, Inc. (the "Borrower"). This loan was sometimes referred to as the "Fiesta Murrieta Loan" and that is how the USACM Trust will refer to it here. This Objection is supported by the Court's record and the Declarations of Geoffrey L. Berman and Edward M. Burr in Support of Omnibus

1 Objections to Proofs of Claim Based Upon the Investment in the Fiesta Murrieta Loan.
2 (the “Berman Decl.” and “Burr Decl.”).

3 THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE
4 DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THE FIESTA MURRIETA
5 LOAN OR TO SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF
6 THE REAL PROPERTY SECURING THE FIESTA MURRIETA LOAN.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. BACKGROUND FACTS**

9 **a. The USACM Bankruptcy**

10 On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief
11 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as
12 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
13 Debtor’s post-petition management of the Debtor was under the direction of Thomas J.
14 Allison of Mesirow Financial Interim Management, LLC, who served as the Chief
15 Restructuring Officer.

16 USACM was a Nevada corporation that, prior to the Petition Date, was in the
17 business of underwriting, originating, brokering, funding and servicing commercial loans
18 primarily secured by real estate, both on behalf of investors and for its own account. That
19 business included the solicitation of investors to purchase fractional interest in loans that
20 USACM originated and then serviced. These investors are referred to as “Direct Lenders”
21 in USACM’s bankruptcy case and in this Objection.

22 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
23 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.
24 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this
25 Court, USACM sold the servicing rights to most of the loans it serviced to Compass
26

Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Fiesta Murrieta Loan. The sale to Compass closed on February 16, 2007.

The USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims under 11 U.S.C. § 502(a).

Upon information derived from filings in the United States District Court, District of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC, et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan service agreements in the USACM bankruptcy case and took a secured interest in those Purchased Assets by executing a Master Repurchase Agreement (“Repurchase Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

Further, from filings in the same action, the Trust believes that “Effective as of September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-RCJ, along with certain affiliates.¹ William A. Leonard, Jr. was appointed trustee in the Asset Resolution case. By Order entered on July 19, 2010 by the Hon. Robert C. Jones in

¹ 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC, Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP Fiesta Murrieta SPE LLC, and Shamrock SPE LLC.

1 the Asset Resolution Case, the servicing rights for 19 loans were transferred to Cross,
2 FLS. The Fiesta Murietta Loan, was among the loans whose servicing rights were
3 transferred to Cross, FLS.

4 The Trust has attempted to monitor loan collections through monitoring the district
5 court litigation and the ARC bankruptcy case, but has received limited information
6 concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or
7 their successors, including the trustee in bankruptcy for Asset Resolution. The Trust has
8 also been in contract with Cross FLC about certain loans that it is servicing, including the
9 Fiesta Murrieta Loan. The following is the extent of the USACM Trust's information on
10 the current servicing and status of the Fiesta Murrieta Loan.

11 **b. The Fiesta Murrieta Loan**

12 USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding
13 for an acquisition and development loan to a borrower identified as "Fiesta Development."
14 A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this
15 reference. (Berman Decl., ¶ 4.) The total loan amount proposed was \$6,500,000. The
16 Offer Sheet described the investment as a "First Trust Deed Investment" and noted that the
17 investment would be secured by a first deed of trust on "approximately 26 acres for
18 development into approximately 56 single family residential lots" in Southwest Riverside
19 County near the intersection of Interstate 15 and 215.² Pursuant to the Loan Agreement,
20 the loan was intended for Borrower to acquire the subject real estate.

21 On April 14, 2005, Borrower made and delivered to various lenders, including the
22 Direct Lenders identified in **Exhibit A**, a "Promissory Note" (the "Note") and a Loan
23 Agreement. (Berman Decl., ¶ 5.) The Note and Loan Agreement provided for a loan of
24 \$6,500,000. The Note was secured by a "Deed of Trust, Assignment of Rents, Security

25 _____
26 ² There does not appear to be an appraisal to support this loan. Loan to value was represented to be 50%
based on prices of "similarly situated finished lots". This property pledged as collateral does not appear to
have been finished, however.

Agreement and Fixture Filing” from the Borrower in favor of the Direct Lenders that was recorded in the official records of Riverside County, California on April 15, 2005 at Instrument Number 2005-0298213. The Note was also supported by an April 14, 2005 Guaranty signed by Richard Ashby and Larry Redman, who, pursuant to the Offer Sheet, “indicate a combined net worth in excess of \$20 million.” (Berman Decl., ¶ 6.)

The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Performing” on the Note as of July 31, 2006 and the “Loan Summary” dated February 28, 2007 shows that Borrower was “Performing” on the Note as of February 28, 2007. (Berman Decl., ¶ 7.) During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders.

Counsel for the Trustee spoke with Cross FLS regarding the current status of the Margarita Annex Loan. Upon information and belief, the loan has stopped performing, and Cross FLS is attempting to find a buyer for the Note. The Borrower continues to own the collateral.

c. The Fiesta Murrieta Claims

Exhibit A, attached, lists Proofs of Claim filed by Direct Lenders that appear to be based upon an investment in the Fiesta Murrieta Loan. (Burr Decl. ¶ 7.) **Exhibit A** identifies the Proof of Claim number, the claimant, the claimant’s address, the total amount of the claim and the total amount of the claim that appears to be related to an investment in the Fiesta Murrieta Loan based upon the information provided by the claimant. (Burr Declaration ¶ 7.) The claims listed in **Exhibit A** are referred to hereafter as the “Fiesta Murrieta Claims.” As required by Nevada LR 3007, a copy of the first page of the proof of claim for each of the claims referenced in **Exhibit A** are attached as **Exhibit C**.

II. JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

III. APPLICABLE AUTHORITY

Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is “unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof of claim controverts the presumption, the creditor ultimately bears the burden of persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996).

IV. THE OBJECTION

The Fiesta Murrieta Loan appears to have been a legitimate, arms-length transaction. In addition, the Direct Lenders took a known risk by investing in a promissory note secured by a lien on real property.

USACM is not liable for the Borrower’s default or any decrease in the value of the collateral.

The Direct Lenders fail to state a claim because USACM does not appear to have breached the loan servicing agreements with respect to collection of the Fiesta Murrieta

1 Loan. USACM was under no duty to foreclose on the collateral securing the Fiesta
2 Murrieta Loan or take any other action.

3 This objection will not affect the Direct Lenders' right to be repaid on the Fiesta
4 Murrieta Loan by the Borrower or to recover from the sale of any collateral that secured
5 the Fiesta Murrieta Loan.

6 **V. CONCLUSION**

7 The USACM Trust respectfully requests that the Court disallow the claims against
8 USACM listed in Exhibit A in full because those claims are based entirely upon an
9 investment in the Fiesta Murrieta Loan. This objection concerns only the Fiesta Murrieta
10 Loan and not any other claims of any of the Direct Lenders. The USACM Trust also
11 requests such other and further relief as is just and proper.

12 Dated: June 16, 2011.

13 LEWIS AND ROCA LLP

14 By s/John Hinderaker (AZ 18024)

15 Robert M. Charles, Jr., NV 6593

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21 Attorneys for the USACM Liquidating Trust

22 Copy of the foregoing and pertinent
23 portion of Exhibits mailed by first
24 class postage prepaid U.S. Mail on
25 June 16, 2011 to all parties listed on
26 Exhibit A attached.

LEWIS AND ROCA LLP

s/ Matt Burns

Matt Burns